

CLOSED

IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MICHIGAN

COMMODITY FUTURES TRADING
COMMISSION,

Plaintiff,

v.

MARQUIS FINANCIAL MANAGEMENT
SYSTEMS, INC.,
THE MARQUIS GROUP, INC.,
JOHN DANIEL LEE,
DAVID PAUL KELLY II and
JOEL SOFIA,

Defendants.

CIVIL ACTION NO. 03-74206

Judge Lawrence P. Zatkoff

Magistrate Judge Capel

FILED

JUN 21 2005

CLERK'S OFFICE
U.S. DISTRICT COURT
EASTERN MICHIGAN

**CONSENT ORDER OF PERMANENT INJUNCTION AND
OTHER ANCILLARY RELIEF AGAINST DEFENDANT JOEL SOFIA**

On October 20, 2003, Plaintiff, Commodity Futures Trading Commission ("CFTC" or "Commission"), filed its Complaint in the above-captioned action seeking to enjoin the defendants from engaging in practices that constituted violations of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. §§ 1 *et seq.* (2002), and Commission Regulations promulgated thereunder, 17 C.F.R. §§ 1 *et seq.* (2004). The Complaint seeks injunctive and other equitable relief against each of the defendants, as well as the imposition of civil monetary penalties for violations of the Act. A statutory restraining order was entered against defendant Joel Sofia ("Sofia") and each of the other defendants on October 20, 2003 and on November 12, 2003, a Consent Order of Preliminary Injunction was entered against Sofia. The entry of this Consent Order of Permanent Injunction and Other Ancillary Relief would conclude this action as to defendant Sofia.

L**CONSENTS AND AGREEMENTS**

To effect settlement of the matters alleged in the Complaint against Sofia without a trial on the merits or any further judicial proceedings, defendant Sofia:

1. Consents to the entry of this Consent Order of Permanent Injunction and Other Equitable Relief Against Sofia ("Order").
2. Affirms that he has agreed to this Order voluntarily, and that no promise or threat has been made by the Commission or any member, officer, agent or representative thereof, or by any other person, to induce consent to this Order, other than as set forth specifically herein.
3. Acknowledges service of the Summons and Complaint.
4. Admits jurisdiction of this Court over him and the subject matter of this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
5. Admits that venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002).
6. Waives:
 - a. all claims which he may possess under the Equal Access to Justice Act, 5 U.S.C. § 504 (2000) and 28 U.S.C. § 2412 (2000), relating to, or arising from, this action;
 - b. any claim of double jeopardy based upon the institution of this proceeding or the entry in this proceeding of any order imposing a civil monetary penalty or any other relief; and
 - c. all rights of appeal from this Order.
7. Sofia consents to the continued jurisdiction of this Court for the purpose of enforcing the terms and conditions of this Order and for any other purposes relevant to this case.

8. Sofia agrees that neither he nor his agents, employees or representatives acting under his authority or control will take any action or make any public statement denying, directly or indirectly, any allegations of the Complaint or findings or conclusions in this Order, or creating or tending to create, the impression that the Complaint or Order is without a factual basis; provided, however, that nothing in this provision shall affect Sofia's (i) testimonial obligations, or (ii) his right to take legal positions in other proceedings to which the Commission is not a party. Sofia will undertake all steps necessary to assure that all of his agents, employees and representatives understand and comply with this agreement.

9. By consenting to the entry of this Consent Order, Sofia neither admits nor denies the allegations of the Complaint or the Findings of Fact contained in this Consent Order, except as to jurisdiction and venue. However, Sofia agrees and intends that the allegations of the Complaint and all of the Findings of Fact and Conclusions of Law made by this Court and contained in Part II of this Consent Order shall be taken as true and correct and be given preclusive effect, without further proof, in the course of any subsequent bankruptcy proceeding filed by, on behalf of, or against any Consenting Party, or any proceeding to enforce this Consent Order, or any other proceeding relating to the fitness of Sofia to act in various capacities governed by the Act. Sofia shall provide immediate notice of any bankruptcy filed by, on behalf of, or against Sofia in the manner required in Part V of this Consent Order. No provision of this Order shall in any way limit or impair the ability of any person to seek any legal or equitable remedy against Sofia or any other person in any other proceeding.

10. The Court, being fully advised in the premises, finds that there is good cause for the entry of this Consent Order and that there is no just reason to delay. The Court therefore directs the entry of the findings of fact, conclusions of law and a permanent injunction and

ancillary equitable relief, pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), as set forth herein.

II.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. This Court has jurisdiction over the subject matter of this action and all parties hereto pursuant to Section 6c of the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. § 13a-1 (2002), which authorizes the Commission to seek injunctive relief against any person whenever it shall appear that such person has engaged, is engaging or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

12. This Court has personal jurisdiction over Sofia, and Sofia has waived service of Summons and the Complaint and consented to the Court's jurisdiction over him.

13. Venue properly lies with this Court pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1 (2002), in that Sofia transacted business in this district, and the acts and practices in violation of the Act have occurred, are occurring, or are about to occur within this district, among other places.

14. The Commodity Futures Trading Commission is an independent federal regulatory agency that is charged with responsibility for administering and enforcing the provisions of the Act, as amended, 7 U.S.C. §§ *et seq.* (2002), and the regulations promulgated thereunder.

15. Joel Sofia is 25 years old and resides in Glasboro, New Jersey. Sofia has sometimes used the alias "Jhoel Sophia" and has never been registered with the Commission in any capacity.

Violations of the Commodity Exchange Act

16. From at least January 2000 through October 2003, Sofia acted as an unregistered associated person ("AP") of commodity pool operators ("CPOs"), namely Marquis Financial Management Systems, Inc. ("Marquis FMS") and The Marquis Group, Inc. ("Marquis Group"), in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002), in that he was involved in the solicitation of funds from participants whose funds were pooled and, in part, used to fund commodity futures and options trading. In connection with such conduct, Sofia used the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as an AP of the CPOs.

17. Sofia sometimes conducted business under the name "EMI" and held himself out as the purported president of EMI-NAS ("EMI-North American Section"), the exclusive promoter of Marquis FMS.

18. Sofia received commissions from Marquis FMS and Marquis Group in the amount of \$25,162.50 for his solicitations of eighteen participants in commodity pools operated by Marquis FMS and Marquis Group.

Need for Permanent Injunctive and Other Ancillary Equitable Relief

19. Sofia has engaged, is engaging, and is about to engage in acts and practices which violate Section 4k(2) of the Act, 7 U.S.C. § 6k(2) (2002). The totality of the circumstances establish that, unless restrained and enjoined by this Court, there is a reasonable likelihood that Sofia will continue to engage in the acts and practices alleged in the Complaint and similar acts and practices in violation of the Act and Commission Regulations. The imposition of other ancillary equitable relief is required to comply with the basic objectives of the Act.

III.

ORDER FOR PERMANENT INJUNCTION

Pursuant to Section 6c of the Act, 7 U.S.C. § 13 a-1, IT IS HEREBY ORDERED THAT:

1. Sofia is permanently restrained, enjoined and prohibited from soliciting, accepting, or receiving from others, funds, securities, or property, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market while associated with a commodity pool operator without being registered with the Commission as an AP of a CPO, in violation of Section 4k(2) of the Act, 7 U.S.C. § 6k(2).
2. Sofia is permanently restrained, enjoined and prohibited from directly or indirectly engaging in any commodity futures or options related activity, including but not limited to:
 - a. Trading on or subject to the rules of any registered entity;
 - b. Engaging in, controlling or directing the trading for any commodity futures, security futures, options, options on futures, or foreign currency futures or options account for or on behalf of himself or any other person or entity, whether by power of attorney or otherwise;
 - c. Soliciting or accepting any funds from any person in connection with the purchase or sale of any commodity interest contract;
 - d. Placing orders or giving advice or price quotations, or other information in connection with the purchase or sale of commodity interest contracts for himself or others except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14 (a)(9);
 - e. Introducing clients to any other person engaged in the business of commodity interest trading;
 - f. Issuing statements or reports to others concerning commodity interest trading; and
 - g. Applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as

provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14 (a)(9), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9).

3. The injunctive provisions of this Order shall be binding on Sofia, and any person insofar as he or she is acting in the capacity of an agent, servant, employee, successor, or assign or attorney of Sofia, and upon any person who receives actual notice of this Order by personal service or otherwise insofar as he or she is acting in concert or participation with Sofia.

IV.

ORDER FOR OTHER EQUITABLE RELIEF

IT IS FURTHER ORDERED THAT:

1. **DISGORGEMENT:** Within ten (10) days of the date of this Order, defendant Sofia, shall pay disgorgement in the amount of \$25,162.50, which money shall be used to partially pay back funds invested and lost in the commodity pools operated by Marquis FMS and Marquis Group by those persons solicited by Sofia ("Disgorgement Amount"). The persons to whom the Disgorgement Amounts shall be paid, and distribution percentages by which each pool participant shall be paid from the Disgorgement Amount, are set forth in Attachment A hereto. Omission from Attachment A shall in no way limit the ability of any participant from seeking recovery from Sofia or any other person or entity.

2. **PAYMENT OF DISGORGEMENT:** Prior to the entry of this Order, Sofia has remitted the Disgorgement Amount to his Attorney, Gilbert Scutti, at the following address: Suite 1010, 16171 J.F. Kennedy Boulevard, Philadelphia, PA 19103-1801, who has deposited those funds into his attorney's escrow account. Within ten days after the entry of this Order, Scutti shall distribute the Disgorgement Amount via checks mailed to pool participants in

accordance with Attachment A. Copies of the checks sent to each participant and copies of the returned checks verifying payment received by each of the pool participants on Exhibit A, shall be mailed to Attorney Susan Padove, Division of Enforcement, at the Commodity Futures Trading Commission, 525 W. Monroe Street, Suite 1100, Chicago, Illinois 60661.

3. **CIVIL MONETARY PENALTY.** Within ten (10) days of the date of this Order, Sofia shall pay a civil penalty of \$10,000 to the Commission sent to Dennese Posey, or her successor, Division of Enforcement, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581, under cover of a letter that identifies defendant making payment and the name and docket number of the proceeding. Sofia shall simultaneously transmit a copy of the cover letter and the form of payment to Gregory G. Mocek, Director, Division of Enforcement, Commodity Futures Trading Commission, at the following address: 1155 21st Street, NW, Washington, DC 20581.

4. Sofia shall not transfer or cause others to transfer funds or other property to the custody, possession or control of any other person for the purpose of concealing such funds or property from the Court, the Commission, or any officer that may be appointed by the Court.

5. **DEFAULT:** Any failure by Sofia to carry out any of the terms, conditions or obligations under any paragraph of this order shall constitute an Event of Default. If any Event of Default occurs the Commission (or its designee) shall be entitled to:

a. an Order from this Court requiring immediate payment of the Disgorgement Amount or the Civil Monetary Penalty; and/or

b. move the Court for imposition of all other available remedies, including, but not limited to, an Order holding Sofia in contempt for violation of this Order.

Upon the occurrence of an Event of Default based upon a claim or cause of action that Sofia failed to make the payment of the Disgorgement Amount or the Civil Monetary Penalty when due, Sofia will be barred from asserting any defense, including expiration of any statute of limitations, waiver, estoppel or laches, where such defense is based on the alleged failure of the Commission to pursue such claims or causes of action during the pendency of this civil action, during the negotiation of Sofia's consent to this Order or while this Order remains in effect.

V.

MISCELLANEOUS PROVISIONS

6. Notices: All notices required to be given by a provision in this Consent Order shall be sent certified mail, return receipt requested, as follows:

Notice to Commission:

Gregory G. Mocek, Director
Division of Enforcement
Commodity Futures Trading Commission
1155 21st Street, N.W.
Washington, D.C. 20581

Susan B. Padove
Division of Enforcement
Commodity Futures Trading Commission
525 W. Monroe Street
Suite 1100
Chicago, Illinois 60661

Notice to Defendant Sofia:

Gilbert J. Scutti, Esq.
Attorney for Defendant Joel Sofia
Dickstein & Scutti
Suite 1010
1617 J.F.K. Blvd.
Philadelphia, PA 19103

7. Entire Agreement and Amendments: This consent Order incorporates all of the terms and conditions of the settlement among the parties hereto. Nothing shall serve to amend or

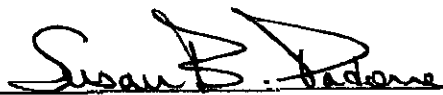
modify this Consent Order in any respect whatsoever, unless: (1) reduced to writing; (2) signed by all parties hereto; and (3) approved by order of this Court.

8. Invalidation: If any provision of this Consent Order, or the application of any provisions or circumstances is held invalid, the remainder of the Consent Order and the application of the provision to any other person or circumstance shall not be affected by the holding.

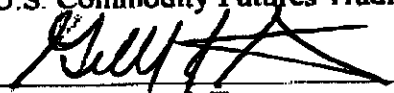
9. Waiver: The failure of any party hereto or of any customer at any time or times to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce the same any other provision of this Consent Order. No waiver in one or more instance of the breach of any provision contained in this Consent Order shall be deemed to be or construed as a further or continuing waiver of such breach or waiver of the breach of any other provision of this Consent Order.

10. Continuing Jurisdiction of this Court: This Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment as to defendant Sofia.

CONSENTED TO AND APPROVED BY:


Susan B. Padove, Senior Trial Attorney
Rosemary Hollinger, Associate Director
U.S. Commodity Futures Trading Commission

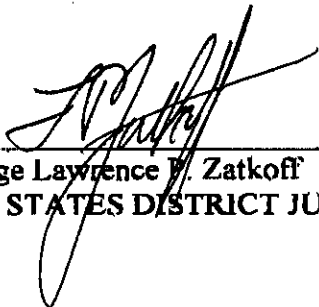
Date: June 14, 2005


Gilbert J. Scutti, Esq.
Attorney for Defendant Joel Sofia
Dickstein & Scutti
Suite 1010
1617 J.F.K. Blvd.
Philadelphia, PA 19103

Date: June 6, 2005

IT IS SO ORDERED.

JUN 21 2005
DATED: _____, 2005



Hon. Judge Lawrence W. Zatkoff
UNITED STATES DISTRICT JUDGE